

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

Click Boarding LLC,

Court File No. 21-CV-210 (NEB/BRT)

Plaintiff,

v.

SmartRecruiters, Inc.,

Defendant.

**CLICK BOARDING LLC'S  
ANSWER TO DEFENDANT  
SMARTRECRUITERS, INC.'S  
FIRST AMENDED  
COUNTERCLAIMS**

---

Plaintiff Click Boarding LLC for its Answer to Defendant SmartRecruiters, Inc.'s Amended Counterclaims, generally denies each and every allegation contained therein, except as specially admitted, averred, or qualified herein.

**INTRODUCTION**

1. Plaintiff admits that it entered into an Agreement with Defendant during March 2018 and hereby answers that the Agreement speaks for itself. Plaintiff denies the remaining allegations in Paragraph 1 of Defendant's Amended Counterclaims.

2. Plaintiff denies the allegations in Paragraph 2 of Defendant's Amended Counterclaims.

3. Plaintiff denies the allegations in Paragraph 3 of Defendant's Amended Counterclaims.

4. Plaintiff denies the allegations in Paragraph 4 of Defendant's Amended Counterclaims.

5. Plaintiff denies the allegations in Paragraph 5 of Defendant's Amended Counterclaims.

6. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of Defendant's Amended Counterclaims regarding statements made by customers. Plaintiff denies all other allegations therein.

7. Paragraph 7 of Defendant's Amended Counterclaims references a document. Plaintiff answers that said document speaks for itself. Plaintiff denies all other allegations therein.

8. The allegations in Paragraph 8 of Defendant's Amended Counterclaims consist of legal conclusions and/or legal opinions requiring no response. To the extent a response is required, Plaintiff denies the allegations in Paragraph 8 of Defendant's Amended Counterclaims.

9. Plaintiff admits that Defendant purported to terminate the Agreement on May 11, 2021, based on Plaintiff's alleged material breaches. Plaintiff denies the allegation in Paragraph 9 of Defendant's Amended Counterclaims that Plaintiff materially breached the Agreement.

10. Plaintiff denies the allegations in Paragraph 10 of Defendant's Amended Counterclaims.

11. Plaintiff denies the allegations in Paragraph 11 of Defendant's Amended Counterclaims.

### **PARTIES**

12. Plaintiff admits, upon information and belief, the allegations in Paragraph 12 of Defendant's Amended Counterclaims.

13. Plaintiff admits the allegations in Paragraph 13 of Defendant's Amended Counterclaims.

### **JURISDICTION AND VENUE**

14. The allegations in Paragraph 14 of Defendant's Amended Counterclaims consist of legal conclusions and/or legal opinions requiring no response. To the extent a response is required, Plaintiff admits the allegations in Paragraph 14 of Defendant's Amended Counterclaims.

15. The allegations in Paragraph 15 of Defendant's Amended Counterclaims consist of legal conclusions and/or legal opinions requiring no response. To the extent a response is required, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. Plaintiff admits the allegations in Paragraph 16 of Defendant's Amended Counterclaims.

### **FACTS**

17. Plaintiff admits, upon information and belief, the allegations in Paragraph 17 of Defendant's Amended Counterclaims.

18. Plaintiff denies the allegations in Paragraph 18 of Defendant's Amended Counterclaims.

19. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of Defendant's Amended Counterclaims.

20. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of Defendant's Amended Counterclaims.

21. With respect to the allegations in Paragraph 21 of Defendant's Counterclaim, Plaintiff admits, upon information and belief, that the hiring process followed by and the needs of many customers can vary. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21 of Defendant's Amended Counterclaims.

22. Paragraph 22 of Defendant's Amended Counterclaim consists solely of self-congratulatory puffery to which no response is required. To the extent that a response is required, Plaintiff is without knowledge or information sufficient to form a belief as to the accuracy of SmartRecruiters' view of itself in the industry. Paragraph 22 also references a "ranking." The document or communication in which that ranking is stated speaks for itself.

23. Plaintiff admits that not all human resources platforms contain onboarding functionality. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23 of Defendant's Amended Counterclaims.

24. Plaintiff admits the allegations in Paragraph 24 of Defendant's Amended Counterclaims state some, but not all, of the functions provided by an onboarding solution.

25. Plaintiff denies the allegations in Paragraph 25 of Defendant's Amended Counterclaims insofar as Defendant has developed, or is in the process of developing, a native onboarding solution called SmartOnboard. Plaintiff admits that Defendant has reported that SmartOnboard is not functional. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 25 of Defendant's Amended Counterclaims.

26. In response to Paragraph 26 of Defendant's Amended Counterclaims, Plaintiff admits that Plaintiff's onboarding solution can be used alongside partial human resource solutions, like that offered by Defendant

27. Plaintiff admits the allegations in Paragraph 27 of Defendant's Amended Counterclaims.

28. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 28 of Defendant's Amended Counterclaims.

29. Plaintiff denies the allegations in Paragraph 29 of Defendant's Amended Counterclaims.

30. Plaintiff denies the allegations in Paragraph 30 of Defendant's Amended Counterclaims.

31. Plaintiff denies the allegations in Paragraph 31 of Defendant's Amended Counterclaims.

32. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 32 of Defendant's Amended Counterclaims.

33. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 33 of Defendant's Amended Counterclaims.

34. Plaintiff admits the allegations in Paragraph 34 of Defendant's Amended Counterclaims.

35. With respect to the allegations in Paragraph 35 of Defendants' Amended Counterclaims, Plaintiff admits that Plaintiff has a role in implementing its onboarding solution as set forth in the Agreement, but states that Defendant has the primary responsibility for implementation under the Agreement.

36. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 36 of Defendant's Amended Counterclaims.

37. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 37 of Defendant's Amended Counterclaims.

38. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 38 of Defendant's Amended Counterclaims.

39. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 39 of Defendant's Amended Counterclaims.

40. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 40 of Defendant's Amended Counterclaims.

41. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 41 of Defendant's Amended Counterclaims.

42. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 42 of Defendant's Amended Counterclaims.

43. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 43 of Defendant's Amended Counterclaims.

44. With respect to the allegations in Paragraph 44 of Defendant's Amended Counterclaims, Plaintiff admits that Defendant has stated that it discounts fees in certain circumstances. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations that such discounts are "frequent" or that Defendant waives the fee as alleged in Paragraph 44 of Defendant's Amended Counterclaims.

45. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 45 of Defendant's Amended Counterclaims.

46. Plaintiff admits only that the terms of the Agreement speaks for itself and denies the remaining allegations in Paragraph 46 of Defendant's Amended Counterclaims.

47. Plaintiff denies the allegations in Paragraph 47 of Defendant's Amended Counterclaims.

48. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 48 of Defendant's Amended Counterclaims.

49. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 49 of Defendant's Amended Counterclaims.

50. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 50 of Defendant's Amended Counterclaims.

51. Plaintiff denies the allegations in Paragraph 51 of Defendant's Amended Counterclaims.

52. Plaintiff denies the allegations in Paragraph 52 of Defendant's Amended Counterclaims.

53. Plaintiff denies the allegations in Paragraph 53 of Defendant's Amended Counterclaims.

54. Plaintiff denies the allegations in Paragraph 54 of Defendant's Amended Counterclaims.

55. Plaintiff denies the allegations in Paragraph 55 of Defendant's Amended Counterclaims.

56. Plaintiff denies the allegations in Paragraph 56 of Defendant's Amended Counterclaims.

57. The allegations in Paragraph 57 of Defendant's Amended Counterclaims consist of legal conclusions and/or legal opinions requiring no response. To the extent a response is required, Plaintiff denies the allegations in Paragraph 57 of Defendant's Amended Counterclaims.

58. Plaintiff denies the allegations in Paragraph 58 of Defendant's Amended Counterclaims.

59. Plaintiff admits only that it has, whenever possible, requested advance notice of customer calls and denies the remaining allegations in Paragraph 59 of Defendant's Amended Counterclaims.

60. Plaintiff denies the allegations in Paragraph 60 of Defendant's Amended Counterclaims.



61. Plaintiff denies the allegations in Paragraph 61 of Defendant's Amended Counterclaims.

62. Plaintiff denies the allegations in Paragraph 62 of Defendant's Amended Counterclaims.

63. Plaintiff denies the allegations in Paragraph 63 of Defendant's Amended Counterclaims.

64. Plaintiff denies the allegations in Paragraph 64 of Defendant's Amended Counterclaims.

65. Plaintiff denies the allegations in Paragraph 65 of Defendant's Amended Counterclaims.

66. Plaintiff denies the allegations in Paragraph 66 of Defendant's Amended Counterclaims.

67. Plaintiff denies the allegations in Paragraph 67 of Defendant's Amended Counterclaims.

68. The allegations in Paragraph 68 of Defendant's Amended Counterclaims consist of legal conclusions and/or legal opinions requiring no response. To the extent a response is required, Plaintiff denies the allegations in Paragraph 68 of Defendant's Amended Counterclaims.

69. Plaintiff denies the allegations in Paragraph 69 of Defendant's Amended Counterclaims.

70. The allegations in Paragraph 70 of Defendant's Amended Counterclaims consist of legal conclusions and/or legal opinions requiring no response. To the extent a

response is required, Plaintiff denies the allegations in Paragraph 70 of Defendant's Amended Counterclaims.

71. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 of Defendant's Amended Counterclaims.

72. Upon information and belief, Plaintiff admits the allegations in Paragraph 72 of Defendant's Amended Counterclaims.

73. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73 of Defendant's Amended Counterclaims.

74. Plaintiff denies the allegations in Paragraph 74 of Defendant's Amended Counterclaims.

75. Plaintiff denies the allegations in Paragraph 75 of Defendant's Amended Counterclaims.

76. Plaintiff denies the allegations in Paragraph 76 of Defendant's Amended Counterclaims.

77. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77 of Defendant's Amended Counterclaims.

78. Plaintiff denies the allegations in Paragraph 78 of Defendant's Amended Counterclaims.

79. Plaintiff denies the allegations in Paragraph 79 of Defendant's Amended Counterclaims.

80. Plaintiff denies the allegations in Paragraph 80 of Defendant's Amended Counterclaims.

81. Plaintiff denies the allegations in Paragraph 81 of Defendant's Amended Counterclaims.

82. Plaintiff denies the allegations in Paragraph 82 of Defendant's Amended Counterclaims.

83. Plaintiff denies the allegations in Paragraph 83 of Defendant's Amended Counterclaims.

84. Plaintiff denies the allegations in Paragraph 84 of Defendant's Amended Counterclaims.

85. Plaintiff denies the allegations in Paragraph 85 of Defendant's Amended Counterclaims.

86. Plaintiff denies the allegations in Paragraph 86 of Defendant's Amended Counterclaims.

87. Plaintiff denies the allegations in Paragraph 87 of Defendant's Amended Counterclaims.

88. Plaintiff denies the allegations in Paragraph 88 of Defendant's Amended Counterclaims.

89. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 89 of Defendant's Amended Counterclaims.

90. Plaintiff denies the allegations in Paragraph 90 of Defendant's Amended Counterclaims.

91. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 91 of Defendant's Amended Counterclaims.

92. Plaintiff denies the allegations in Paragraph 92 of Defendant's Amended Counterclaims.

93. Plaintiff denies the allegations in Paragraph 93 of Defendant's Amended Counterclaims.

94. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94 of Defendant's Amended Counterclaims.

95. Plaintiff is without knowledge or information sufficient to form a belief as to whether SmartRecruiters has received complaints from customers. Plaintiff denies the remaining allegations in Paragraph 95 of Defendant's Amended Counterclaims.

96. Plaintiff denies the allegations in Paragraph 96 of Defendant's Amended Counterclaims.

97. Plaintiff denies the allegations in Paragraph 97 of Defendant's Amended Counterclaims.

98. Paragraph 98 of Defendant's Amended Counterclaims references an email communication. Plaintiff admits only that the email communication speaks for itself and denies the remaining allegations therein.

99. Plaintiff denies the allegations in Paragraph 99 of Defendant's Amended Counterclaims.

100. Plaintiff denies the allegations in Paragraph 100 of Defendant's Amended Counterclaims.

101. Paragraph 101 of Defendant's Amended Counterclaims references an email communication. Plaintiff admits only that the email communication speaks for itself and denies the remaining allegations therein.

102. Plaintiff is without knowledge or information sufficient to form a belief as to the subjective feeling of the unnamed customer referenced in Paragraph 102 of Defendant's Amended Counterclaims. Plaintiff denies all remaining allegations therein.

103. Plaintiff denies the allegations in Paragraph 103 of Defendant's Amended Counterclaims.

104. Plaintiff denies the allegations in Paragraph 104 of Defendant's Amended Counterclaims.

105. Plaintiff denies the allegations in Paragraph 105 of Defendant's Amended Counterclaims.

106. Plaintiff denies the allegations in Paragraph 106 of Defendant's Amended Counterclaims and affirmatively alleges that it was Defendant that unilaterally imposed the requirement that Plaintiff bill for its services on certain projects on a time and materials basis.

107. Plaintiff denies the allegations in Paragraph 107 of Defendant's Amended Counterclaims and affirmatively alleges that it was Defendant that unilaterally imposed the requirement that Plaintiff bill for its services on certain projects on a time and materials basis.

108. Plaintiff denies the allegations in Paragraph 108 of Defendant's Amended Counterclaims.

109. Plaintiff denies the allegations in Paragraph 109 of Defendant's Amended Counterclaims.

110. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 110 of Defendant's Amended Counterclaims.

111. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 111 of Defendant's Amended Counterclaims.

112. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 112 of Defendant's Amended Counterclaims.

113. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 113 of Defendant's Amended Counterclaims regarding customers' subjective feelings. Plaintiff denies all other allegations therein.

114. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114 of Defendant's Amended Counterclaims regarding customers' subjective feelings.

115. The allegations in Paragraph 115 of Defendant's Amended Counterclaims consist of legal conclusions and/or legal opinions requiring no response. To the extent a response is required, Plaintiff denies the allegations in Paragraph 115 of Defendant's Amended Counterclaims.

116. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1116 of Defendant's Amended Counterclaims regarding customers' subjective feelings. Plaintiff denies all other allegations therein.

117. In response to the allegations in Paragraph 117 of Defendant's Amended Counterclaims, Plaintiff admits only that it is billed for fees in accordance with the Agreement. Plaintiff denies all other allegations therein.

118. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118 of Defendant's Amended Counterclaims.

119. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 119 of Defendant's Amended Counterclaims regarding customers' subjective feelings or what fees have been passed on to customers. Plaintiff denies the remaining allegations therein.

120. Plaintiff denies the allegations in Paragraph 120 of Defendant's Amended Counterclaims.

121. Plaintiff denies the allegations in Paragraph 121 of Defendant's Amended Counterclaims.

122. Plaintiff denies the allegations in Paragraph 122 of Defendant's Amended Counterclaims.

123. Plaintiff denies the allegations in Paragraph 123 of Defendant's Amended Counterclaims.

124. Plaintiff denies the allegations in Paragraph 124 of Defendant's Amended Counterclaims.

125. Plaintiff denies the allegations in Paragraph 125 of Defendant's Amended Counterclaims.

126. Plaintiff denies the allegations in Paragraph 126 of Defendant's Amended Counterclaims.

127. Plaintiff denies the allegations in Paragraph 127 of Defendant's Amended Counterclaims.

128. Plaintiff admits only that the Data Processing Agreement ("DPA") speaks for itself and denies the remaining allegations in Paragraph 128 of Defendant's Amended Counterclaims.

129. Plaintiff admits only that the DPA speaks for itself and denies the remaining allegations in Paragraph 129 of Defendant's Amended Counterclaims.

130. Plaintiff admits only that the Agreement speaks for itself and denies the remaining allegations in Paragraph 130 of Defendant's Amended Counterclaims.

131. Plaintiff admits only that the Agreement and the DPA speak for themselves and denies the remaining allegations in Paragraph 131 of Defendant's Amended Counterclaims.

132. Plaintiff denies the allegations in Paragraph 132 of Defendant's Amended Counterclaims.

133. Plaintiff denies the allegations in Paragraph 133 of Defendant's Amended Counterclaims.

134. Plaintiff denies the allegations in Paragraph 134 of Defendant's Amended Counterclaims.

135. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 135 of Defendant's Amended Counterclaims.



136. The allegations in Paragraph 136 of Defendant's Amended Counterclaims consist of legal conclusions and/or legal opinions requiring no response. To the extent a response is required, Plaintiff denies the allegations in Paragraph 136 of Defendant's Amended Counterclaims.

137. Plaintiff denies the allegations in Paragraph 137 of Defendant's Amended Counterclaims.

**FIRST CLAIM FOR RELIEF**

138. In response to the allegations in Paragraph 138 of Defendant's Amended Counterclaims, Plaintiff restates its responses to the preceding paragraphs.

139. Plaintiff admits the allegations in Paragraph 139 of Defendant's Amended Counterclaims.

140. Plaintiff denies the allegations in Paragraph 140 of Defendant's Amended Counterclaims.

141. Plaintiff denies the allegations in Paragraph 141 of Defendant's Amended Counterclaims.

142. Plaintiff denies the allegations in Paragraph 142 of Defendant's Amended Counterclaims.

143. Plaintiff denies the allegations in Paragraph 143 of Defendant's Amended Counterclaims.

144. Plaintiff denies the allegations in Paragraph 144 of Defendant's Amended Counterclaims.

145. Plaintiff denies the allegations in Paragraph 145 of Defendant's Amended Counterclaims.

146. Plaintiff denies the allegations in Paragraph 146 of Defendant's Amended Counterclaims.

147. Plaintiff denies the allegations in Paragraph 147 of Defendant's Amended Counterclaims.

148. Plaintiff denies the allegations in Paragraph 148 of Defendant's Amended Counterclaims.

149. Plaintiff denies the allegations in Paragraph 149 of Defendant's Amended Counterclaims.

150. Plaintiff denies the allegations in Paragraph 150 of Defendant's Amended Counterclaims.

151. Plaintiff denies the allegations in Paragraph 151 of Defendant's Amended Counterclaims.

### **SECOND CLAIM FOR RELIEF**

152. In response to the allegations in Paragraph 152 of Defendant's Amended Counterclaims, Plaintiff restates its responses to the preceding paragraphs.

153. Plaintiff denies the allegations in Paragraph 153 of Defendant's Amended Counterclaims.

154. Plaintiff denies the allegations in Paragraph 154 of Defendant's Amended Counterclaims.

155. Plaintiff denies the allegations in Paragraph 155 of Defendant's Amended Counterclaims.

156. Plaintiff denies the allegations in Paragraph 156 of Defendant's Amended Counterclaims.

157. Plaintiff denies the allegations in Paragraph 157 of Defendant's Amended Counterclaims.

### **THIRD CLAIM FOR RELIEF**

158. In response to the allegations in Paragraph 158 of Defendant's Amended Counterclaims, Plaintiff restates its responses to the preceding paragraphs.

159. Plaintiff denies the allegations in Paragraph 159 of Defendant's Amended Counterclaims.

160. Plaintiff denies the allegations in Paragraph 160 of Defendant's Amended Counterclaims.

161. Plaintiff denies the allegations in Paragraph 161 of Defendant's Amended Counterclaims.

162. Plaintiff denies the allegations in Paragraph 162 of Defendant's Amended Counterclaims.

163. Plaintiff denies the allegations in Paragraph 163 of Defendant's Amended Counterclaims.

164. Plaintiff denies the allegations in Paragraph 164 of Defendant's Amended Counterclaims.

165. Plaintiff denies the allegations in Paragraph 165 of Defendant's Amended Counterclaims.

#### **FOURTH CLAIM FOR RELIEF**

166. In response to the allegations in Paragraph 166 of Defendant's Amended Counterclaims, Plaintiff restates its responses to the preceding paragraphs.

167. Plaintiff denies the allegations in Paragraph 167 of Defendant's Amended Counterclaims.

168. Plaintiff denies the allegations in Paragraph 168 of Defendant's Amended Counterclaims.

169. Plaintiff denies the allegations in Paragraph 169 of Defendant's Amended Counterclaims.

170. Plaintiff denies the allegations in Paragraph 170 of Defendant's Amended Counterclaims.

171. Plaintiff denies the allegations in Paragraph 171 of Defendant's Amended Counterclaims.

#### **FIFTH CLAIM FOR RELIEF**

172. In response to the allegations in Paragraph 172 of Defendant's Amended Counterclaims, Plaintiff restates its responses to the preceding paragraphs.

173. Plaintiff admits the allegations in Paragraph 173 of Defendant's Amended Counterclaims.

174. Plaintiff denies the allegations in Paragraph 174 of Defendant's Amended Counterclaims.

175. Plaintiff denies the allegations in Paragraph 175 of Defendant's Amended Counterclaims.

176. Plaintiff denies the allegations in Paragraph 176 of Defendant's Amended Counterclaims.

177. Plaintiff denies the allegations in Paragraph 177 of Defendant's Amended Counterclaims.

178. Plaintiff denies the allegations in Paragraph 178 of Defendant's Amended Counterclaims.

179. Plaintiff denies the allegations in Paragraph 179 of Defendant's Amended Counterclaims.

180. Plaintiff denies the allegations in Paragraph 180 of Defendant's Amended Counterclaims.

181. Plaintiff denies the allegations in Paragraph 181 of Defendant's Amended Counterclaims.

### **ADDITIONAL DEFENSES**

Plaintiff asserts the following additional defenses. Plaintiff does not intend to assume the burden of proof with respect to those matters which, pursuant to law, Defendant bears the burden.

1. Defendant's Amended Counterclaims fail in whole or part to state a claim upon which relief may be granted.

2. Defendant's Amended Counterclaims fail due to its own conduct, including Defendant's material breaches of the Agreement.

3. Defendant's Amended Counterclaim for defamation is barred by the defense of truth.

4. Defendant's Amended Counterclaims are barred in whole or in part because any damages that it may have sustained were caused by Defendant's own improper conduct, misrepresentation, negligence, contributory fault, or other actions for which Plaintiff cannot be held liable.

5. The relief sought by Defendant's Amended Counterclaims may be barred by its failure to mitigate damages and/or failure to suffer damages.

6. Defendant's Amended Counterclaims are barred in whole or in part by the doctrine of set-off.

7. Defendant's Amended Counterclaims are barred in whole or in part by the doctrines of waiver, unclean hands, and/or estoppel.

8. Defendant's Amended Counterclaim for unjust enrichment is barred because Defendant cannot prevail on a theory of unjust enrichment where it alleges that the parties' relationship is governed by a contract.

9. Plaintiff reserves the right to amend its Answer to assert additional defenses that may be discovered during the course of this litigation.

Dated: June 7, 2021

/s/ Joseph J. Cassioppi

Joseph J. Cassioppi (#0388238)

Emily M. McAdam (#0400898)

**FREDRIKSON & BYRON, P.A.**

200 South Sixth Street

Suite 4000

Minneapolis, MN 55402-1425

Minneapolis, MN 55402-1425

(612) 492-7000 (telephone)

(612) 492-7077 (facsimile)

jcassioppi@fredlaw.com

emcadam@fredlaw.com

***Attorneys for Plaintiff***

73101852 v1